File No. 297
1910.

Collection No.

Mysore Residency

8/3/47

Pros. Serial Nos. 1-7

Subject.

Authorising the First class 2nd Magistrate of the Station to hear such appeals against the convictions by the Bench of Magistrates as may be transferred to him by the District Magistrate

Previous References.

F 90/90

Later References.

F 124/12
F 110/22.
F 119/30

(Blue).

-678S&P—(G-10)

E. P. B.—8-1910.—

File No. 2977/91

DENT'S OFFICE.
te Sheet.

Letter No. 4800 dated 11th October
from the Dpty Inspr, Cor Mr Statham

SUBJECT.
Authority other than Dpty Inspr to hear
from the Conviction & Sentence
of the Bank Inspector

It is certainly undesirable
the Dpty Inspr to hear appeals from
convictions & sentences in municip
cases in which prosecution was ha
at his instance as President, Munic
(municipal) & it appears therefore
necessary that in such cases, appeals
should be heard by some one other th
Dpty Inspr & President, Municipal Comm

2 In connection with arrangements
made under the Foreign Jurisdiction &
Extradition Act for the exercise of Consul
jurisdiction within railway lands in
Syria over which jurisdiction has been
ceded by the Sultan, the Supt of Railway
Police (Mr Hemmington) exercises within
the [illegible] 1st class consular

Foreign Office letter
No. 509-S. of 6-2-'96
Part II, clause (4)

A

respect of the Constitution, the ...
provided to hear appeals from the decisions of [illegible] No.
~~[illegible]~~ the Bench (not of the third class
appointed, the 2nd Magte, who is a 1st class
Magte in the Town Station, may be empowered under Sec 30 C.P.C.
can appeals from the decisions of the
Bench of Magistrates (vide section
[illegible] of the Court of Criminal Procedure)

18/10

Rest. (on return).

I agree with the above. Under § 30
of the C.P.C. (vide also Schedule IV)
the Local Govt. can empower a first
class Magistrate to hear such appeal
& under § 407 C.P.C. the D.M. can
transfer appeals to such Magistrates.
The 2nd Magistrate may be empowered
accordingly

MBW.
19/10.

23/10

Draft please
MBW
2

. Complete notification is submitted for approval

1/10 [illegible] I question the addition of Sahib
to K. B. Abdul Rahman in a not
MBW 28

E. P. B.—4-1910.—3,000.

RESIDENT'S OFFICE.

Note Sheet.

No. 297/1910

Sl 3 Letter No. 3032 dated the 2nd/3rd August 19.
Sl 4. from the Dt Magistrate, Ctm & Bangal
Letter No 3077 dt 8th August 1910 — do — do

SUBJECT.

Regarding the Court to try certain criminal c
instituted under the orders of the President, Mysl Co
against certain European British subjects.

The cases in question can only be
tried by Justices of the Peace
by J.P.s. In the circumst
explained by the Dt Magistrate, the c
may, if approved, be ordered to b
instituted in before the J.A.R.s
is a J.P., and the Dt Magistrate inf
accordingly. (It will, however, app
Flag H (para 12) from the note on sl 1 of the Sessions Cour
File below: that there is no legal object
to the Dt. Magistrate trying cases under
the Bangalore Incmt Law, though they
may have been initiated by him a
President

:9
8/11 Rest.

Please see the two receipts below from Mr. Richards. I am afraid I have no sympathy whatever with his conscientious scruples, & objection on principle to the cases being transferred to the Trial. At present, in any case, thanks to Mr. Richards himself I am unable to try such cases in view of the Madras High Court ruling J. Ps in Bangalore & Mysore, so that Mr. Richards, as he himself must be aware, is the Magistrate competent to deal with them.

The work entailed is of course nothing & if there is any reason for Mr. R's objections I would withdraw such case-work. It is ridiculous his saying that he cannot approach such cases with an unbiassed mind. A person is charged with having dog without a license & refuses to remove encroachment & information furnished either the Revenue Manager or Overseer, Mr. Richards as President gives formal Sanction to the prosecution: any reasonable person suppose that a District Magistrate is unable to give a fair hearing & impose a fair penalty in such a case, simply because he happens to Sanction the prosecution. Cases like this

(He has no more personal interest in the maintenance of rules than any other magistrate).

Notes—*continued*

for not ten

ocem in the Municipality & one of the ad
advantages possessed by the District Magistra
in such matters is that he can himself d
of such cases. If 2 A at Indore raised cas
objections & the C.M.O in any Cantonment d
Sana, he would have to create J.Ps all
India & retire magistrates, since in many p
there is only the one magistrate to deal with
case against a Municipal Commr. I have he
heard of a Municipal President & Vice-Presid
Cantering against their such cases & personally
my capacity as Jobe in the U.P. I rejoice
being able to deal with certain cases but a
ensure that they were dealt with as I thought
ought Jobe but also to see that the Municip
Officials did their work properly.
If the Jhansi Municipality & President of the D
Committee I tried a big case of evading octro
general swindling which resulted not in a
but the dismissal of certain octroi officials.
case went up to the Allahabad High Court &
upheld. There was no suggestion as to bona fides
apart from the satisfaction of having a perver
discharged in the Dept of which I had cha
I gained considerable experience of octroi adm
I can suggest that you might mention to the Ri

line of that you see no reason for refusing
wireless W/L. exists in every municipality & town.
Can
Are you aware, his predecessors here have
no objection. We might then briefly write
Asst Official
Reply to this letter.

MBW
11/8

Please also see Mr. Fraser's ruling at Hay P* x not to a refer
in a similar case submitted by Mr. Richards & VB 27/1 1/21

I have spoken to Mr Graham

Please reply as proposed

15/8

Secr.

Draft for approval

MBW
16/8

15/8

issued no. 5007 dated 19th August 1911. S.S.

Margin for binding not to be written on.

rgin for
ding not
e written
on.

Office Note.

File No. 297/1916

* Serial No 6

* Letter No. 1210. dated 23rd April
from the District Magistrate, C & M. Station

SUBJECT.

Applications for the conferring of powers under sec. 3
of the C.C.P. on the 1st class Second Magistrate to hear
such appeals from convictions of the second class, Bench
Magistrates as may be transferred to him by the District Magistr

(a) Sec. 407 (1) C.C.P.

(a) A person convicted on a trial held by a Magistra
of the second class may appeal to the District
(b) Sec. 407 (2) C.C.P. Magistrate, and the (b) District Magistrate has pow
to direct the transfer of such appeals to a Magistr
of the first class who has been empowered by the
Local Government to hear such appeals.
The Local Government can empower first cla
Magistrates to hear such appeals under sec. 37 o
the C.C.P.
The letter under reference is an application for the
conferring of such powers by the Local Governm
Please see Serial No 1 and the action taken thereon (S
The circumstances appear to be similar and in t
first case for the reasons stated in the letter from
(c) Serial 1 the District Magistrate (c) No 4800 dated 11th October,
(d) Serial 2 (d) the Notifn. was issued empowering the then first
class Magistrate to hear appeals from convictio
by the Bench of Magistrates exercising powers o
a Magistrate of the Second class in the C & M. Statio
of Bangalore.
But see Serials, 3, 4, and 5.
The offences were offences under the Municipal Ac
but the accused being European British subjects, i
was found necessary to have the charges

quired into and tried by a Justice of the
Warburton having declined to accept the conduct (a) p. 4 of notes on file.
the trial, it was left to the District Magistrate to
estigate into the charges as being the only other
n competent to try such charges.

would appear however that Mr Warburton (b) p. 4 of notes on file
clined or neglected to accept the necessity for
transfer of cases from the District Magistrate
here it would appear that the District Magistrate
his capacity as President was virtually the
e Claimant.

the reasons explained in his (c) letter, which reasons (c) pp. 4, 5 & 6 of notes on file.
re (d) communicated to the District Magistrate (d) Serial 5
was decided that should cases of the kind
ise in the future, they would leave to be disposed of
the District Magistrate himself.
e present District Magistrate (apparently) estimable to accept
position and submits that cases would occur
here it would be undesirable for the District
agistrate to dispose of them.
n this connection attention is invited to sec. 556
the C. C. P. The Explanation to the Sec. covers
e Provincial where a Magistrate is also Municipal
mmissioner.
Magistrate is not deemed to be a party or
rsonally interested by reason only that he is a
unicipal Commissioner.
t will therefore be necessary to decide in what
ses a Magistrate who is a Commissioner can be
sidered to be personally interested so as to
squalify him from conducting a trial.
the following statements on the point appear
be relevant:—

"It (the explanation) was rather intended to (e) para 21 of notes on sec. 556 from Soloman's Commentaries on the C. C. P. (fourth edition) put up.
prevent an objection being raised that, from
the mere fact that the Magistrate might

Margin binding to be written on.

ed happen to be a Municipal Commissioner, he was
necessarily disqualified from holding a trial in
which some Municipal matter was involved. This
a different matter when we find that the Magistrat
is practically one of the prosecutors and the Judge

(m) para 23 of idem "(m) If a Municipal Commissioner took any part
in promoting prosecution by concurring in
sanctioning it at a meeting of the Managing
Committee or otherwise, he is disqualified by rea
of the existence of a personal interest over and
above what may be supposed to be felt by ea
Municipal Commissioner in the affairs of th
Municipality.

(k) para 14 of idem (k) A distinction has been observed between directing a
authorising a prosecution, the former only being
held sufficient ground to constitute a disqualify
interest".

From these remarks, it would appear that in a
where a District Magistrate has initiated a
prosecution, either by instituting or giving orde
for the institution of the prosecution, there
would be sufficient ground for holding the
the District Magistrate is disqualified from
trying the case, and the opportunity would be
suitable one to transfer such cases to the file o
Magistrate who is competent to try them.

The cases noticed by the District Magistrate, a
to be similar to those in which the District
Magistrate has a direct interest in the result
the prosecution, and in such cases appeals
will properly be heard by some one other t
the District Magistrate and President, Munici
Council.

If approved the suggestion of the District Ma
may be accepted, and th

communicating power to hear appeal under sec. (2) C.C.P. to the 1st Class Second Magistrate. Chalan up for approval.
Submitted for orders.

4-21.

Margin binding to be writ on.

It is submitted that the 2nd Magte. (2)
may, as proposed, be empowered to hear such appeals as may be transferred to him by the Dt. Magte

A.S.
27/4

Reminder (3)

Please see L.V.C. and the ongoing notes from para 1. There are several High Court rulings under S 556 Cr. PC. which would make it clear that the District Magistrate should not hear appeals in such cases as the one referred to in L.V.C. In this connection reference is invited to notes 5, 14, 20 * 21 & 23 * to S 556 in Sohoni's Cr. PC. Laws up to the date of this Dist. Magt's letter may be examined and necessary notification may issue under S 37 Cr. PC.

* These notes refer to trials and not appeals but the principle in each case seems to be the same.

A.S.
2.5.1921

approved
5.V.21

Draft Notific. put up.

RESIDENT'S OFFI

—:o:—

NOTES AND PRE

R. P B —6-05.—1,000.

R. P. B.—5-08.—

RESIDENT'S OFFICE
No. 4800
BANGALORE
Register No. 6188
Receipt 14-10-10
No. 297/190

FROM

F.J. Richards,

OFFICE OF THE DISTRICT MAGISTRATE
CIVIL AND MILITARY STATION, BANGALORE
Dated 14th October

ESQ., I. C. S.,
DISTRICT MAGISTRATE,
CIVIL AND MILITARY STATION
BANGALORE

To

P.B. Warburton Esquire., *I.C.S.*,
FIRST ASSISTANT TO THE HONOURABLE THE RESIDENT
IN MYSORE.

SIR,

I have the honour to request that you will kindly place the following before the Hon'ble the Resident for his orders.

1. One Syed Khadur' erected a house in his garden without obtaining the necessary permission from the Station Municipality and he was given a notice to remove the unauthorized building.

2. Having failed to comply with the notice, Syed Khadur was put up before the Bench of Magistrates, and was fined Rs 25/-/- on the 16th March 1910, under section 161 of the Bangalore Municipal Law.

3. In sentencing Syed Khadur the Bench of Magistrates directed him to comply with the notice within 10 days from the date of conviction lest he would be levied with a fine Rs 1/- per diem until such time he complied with the notice.

4. The Municipality at ~~many~~ my instance had to put him up again before the Bench court and he was fined Rs 142/- on 1 August last. He has now appealed to this court against the conviction and sentence.

P.T.O.

R. P. B —6-1910.—200.

5. I think it most undesireable that I should decide appeal as I took ~~the~~ the initiative in the prosecution I therefore submit that the Hon'ble the Resident will b pleased to empower Mr. Hannyngton who is a First Class Magistrate to hear appeals in order that I may transfer this and any other appeals under Clause (2) to section of the Code of Criminal Procedure whenever it may be co dered expedient.

6. If however there is any objection to empowering Mr. Hannyngton on the understanding that he derived his powers as First Class Magistrate under the Foreign Juri diction and Extradition Act 1879 and not under the Code Criminal Procedure, the 2nd Magistrate may be empowered

I have the honour to

Sir,

Your most obedient servan

District Magistrate.

THE HON'BLE THE RESIDENT IN MYSORE.

NOTIFICATION.

No. 80 dated Bangalore, the 27th October 1910.

Under Section 37 of the Code of Criminal Procedure (Act V of 1898) as applied to the Civil and Military Station of Bangalore, Khan Bahadur M. Abdul Rahman, Magistrate of the First Class, Civil and Military Station of Bangalore is invested with power to hear appeals from convictions by the Bench of Magistrates exercising powers of a Magistrate of the Second Class in the said Station.

By Order,

(Sd) P. B. Warburton

First Assistant Resident.

To

The Publisher, Gazette of India, for publication in Part II of the Gazette.

No. 6512.

A copy of the foregoing notification is forwarded herewith to the District Magistrate, Civil and Military Station of Bangalore, forinformation with reference to his letter No.4600, dated the 11th October 1910 and for communication to Khan Bahadur Abdul Rahman.

(Sd) P. B. Warburton

First Assistant Resident.

R.R.
26.10.10.

41

3032 encl. paper

4585
4814

OFFICE OF THE DISTRICT MAGISTRATE,
CIVIL AND MILITARY STATION, BANGALORE.

Da 2nd August 1911.

FROM

F.J.Richards, Esq., I. C. S.,
DISTRICT MAGISTRATE,
CIVIL AND MILITARY STATION,
BANGALORE.

To P. R. Warburton, Esquire, I.C.S.,
THE FIRST ASSISTANT TO THE HONOURABLE THE RESIDENT
IN MYSORE.

I have the honor to submit for favour of your orders t charge sheets, one under the Hackney Carriage Rules and the other under the Bangalore Municipal Bye-laws, presented the former by the Hackney Carriage Inspector and the latter by t Revenue Manager, in the Court of the Second Magistrate, Civi and Military Station. The Second Magistrate returned them with the order "may be filed in the District Magistrate's Court". As in both cases I am virtually the complainant i my capacity of President, Municipal Commission , I have the strongest objection to entertaining these complaints. The matter has been made the subject of correspondence before (vide Mr. Copeland's letter 300 of 2nd October 1909). But it is not on merely legal or technical grounds but on ground of public interest that I object to trying cases in which I am complainant. It is impossible for me to deal with such cases with an unbiassed mind, and in consequence in disposin of them I am deterred from giving such sentence as I think such cases deserve. In short my double position as complai ant and Magistrate doubly weakens my hands as a Magistrate a

weakens them also as President of the Commission.

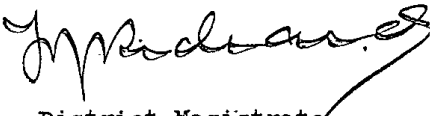
In view of the above I request the favour of instructions as to

me.

I have the honor to be,

Sir.

Your most obedient servant,



District Magistrate.

Encl. with Letter

R. P. B.—4-05.—

No. 3077 Ens 3.

OFFICE OF THE DISTRICT MAGISTRATE,
CIVIL AND MILITARY STATION, BANGALORE

Dated 8th August 19(

RESIDENT'S OFFICE,
BANGALORE
Register No. 4095
Date of Receipt 11/8/14
File No. 2971/10

FROM

F.J.Richards, Esq., I. C. S.,
STRICT MAGISTRATE,
CIVIL AND MILITARY STATION,
BANGALO

To P. B. Warburton, Esquire, I.C.S.,
THE FIRST ASSISTANT TO THE HONOURABLE THE RESIDEN
IN MYSO

In continuation of my letter No.3032 dated 2nd
I have the honor to submit another charge sheet filed
Municipality before the Bench of Magistrates, which wa
returned to this court for disposal accused being a Br
Born subject, and to request the favour of orders in t
matter.

I have the honor to be
Sir,
Your most obedient serva

F J Richards

No. 5007 Enc 7

FROM

P. B. WARBURTON, ESQ., I. C. S.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

F.J. Richards., Esq., I.C.S.,
District Magistrate,
Civil and Military Station of Bangalore.

Dated Bangalore, 14th August 1911.

SIR,

I am directed to acknowledge the receipt of your -- letters No. 3032 and 3077, dated the 2nd and 8th August 1911, in regard to the disposal of certain cases of -- offences against Municipal Laws.

2. You request that, in view of your dual capacity as President of the Municipal Commission and District -- Magistrate, such cases may be transferred to some other Court for disposal. The Resident has carefully considered the matter but regrets that he is not convinced of the necessity of taking such action. The combination of these capacities in one person exists in almost every Municipality and although, in certain instances, it may be objectionable for the same authority to sanction prosecutions and to try the cases, the large majority of the offences are of a trivial nature and the possible existance of an unintentional bias does not appear to the Resident to be a matter of sufficient importance to require special safeguards. Moreover, the fact that as District Magistrate he is empowered to impose penalties for

R. O. 2.—R. P. B.—8-1911.—3,000.

r such offences considerably strengthens the pos
the Municipal President, and enables him to kee
rsonal check on the preventive work of his subor
am therefore to return the enclosures to your le
der reply, with the request that you should dispo
em and of similar cases which may arise in futur

I have the honour to be,

Sir,

Your most obedient servant.

S. 22.—R. P. B.—8-1918.—

:e of the Dist. Magistrate,

/5. ENCL

CIVIL AND MILITARY STATI

Bangalore, 23rd April

FROM

T. J. Tasker, Esqr., O.B.E., I.C.S.,
Dist. Magistrate, C. & M. Stati
B a n g a l o r

To

Major C. T. C. Plowden, I.A.,
Secretary to the Hon'ble
Resident in Mysore, B a n

SIR,

I have the honour to state that an appeal h
been filed before me agains
of Magistrates.

2. This is a case in which the appellant was prosecuted for failing to comply with a special noti issued by the President, Municipal Commission, direc him to dismantle a building. I personally detected the unsanctioned building and it was under my perso instructions that the prosecution was launched in th lower court. As Municipal President I have issued series of orders against the appellant. I am aware your letter No. 5007 dated 19-8-11, but I submit tha cases, such as this one, must occur where it is un- desirable from every point of view for the District Magistrate to dispose of them.

SC 5 29/10

3. To avoid difficulties of this nature I sugg that the 1st Class Second Magistrate may be invested with powers under Section 407 (2) C.P.C. to hear suc appeals from convictions of the 2nd class Bench of

in the Madras Presidency, the Sub-Divisional Magistrat
appeals from subordinate courts as a matter of cour

request that early orders may be passed in the matt

I have the honour to be.

Sir,

Your most obed

Dist. Magistrate.

IN THE RESIDENCY AT MYSORE

---:0:---

No. 31. Dated, Banga[illegible]

N O T I F I C A T I O N.

Under Section 37 of the Code of Criminal Procedure (A of 1898) as applied to the Civil and Military Station of Bangalore, the First Class 2nd Magistrate, Civil and Milit Station of Bangalore is invested with power to hear such appeals from convictions by the Second Class Magistrates under powers of a Magistrate of the second class in the said Sta as may be transferred to him by the District Magistrate.

By order,

Sd/ T. J. Justice

SECRETARY TO THE RESIDENT.

To be published in Part I of the Mysore Residency Orders

No. 4449 SF 14-5-21

A copy of the foregoing notification is forwarded to District Magistrate, Civil and Military Station of Bangalo for information with reference to his letter No.1210, date April 1921.

Sdy T. J. Justice

JVR
12/5